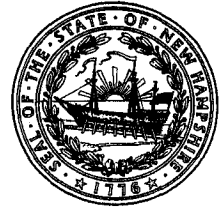




The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Douglas & Linda Fournier  
P.O. Box 297  
Goshen, NH 03752

Re: Gilman Pond Rd, Unity Tax Map 12/Lot 101  
Wetlands Bureau Files 2004-2271/2005-2727

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
No. AF 06-006**

February 13, 2006

**I. INTRODUCTION**

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to Douglas & Linda Fournier, pursuant to RSA 482-A and NH Admin. Rule Env-C 601. The Division is proposing that fines totaling \$2,000 be imposed against Douglas & Linda Fournier for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. PARTIES**

1. The Department of Environmental Services, Water Division ("the Division"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Douglas & Linda Fournier are individuals having a mailing address of Post Office Box 297, Goshen, NH 03752.

**III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS**

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation of violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. Douglas and Linda Fournier are the owners of property located on Gilman Pond Road in Unity, New Hampshire, more particularly described as Lot 101 on Unity Tax Map 12 (the "Property").
4. On September 23, 2004, the Division received a complaint from the Unity Conservation Commission alleging that Mr. and Mrs. Fournier had constructed a logging road in a wetland on

the Property. The complaint was assigned Wetlands Bureau Complaint File # 2004- 2271.

5. On November 18, 2004, Division personnel conducted a site inspection of the Property and observed that jurisdictional wetlands had been impacted and a culvert had also been placed in a jurisdictional wetland. Division personnel stated to Mr. Fournier that any future impacts to wetlands would require an approved permit from DES prior to the commencement of work and requested that the wetland be voluntarily restored. A portion of that restoration included re-grading a wetland side slope and seeding it with a wetland seed mix. The work was to be conducted under the supervision of a certified wetland scientist and photo documentation showing the completed restoration submitted by December 1, 2004.

6. On December 6, 2004, the Division received photo documentation showing the completed restoration. The photos were submitted by Jeffrey A. Evans, Certified Wetlands Scientist, for Landmark Land Services, LLC.

7. On January 7, 2005, Division personnel determined that Mr. and Mrs. Fournier had complied with the restoration requests and sent a letter to Mr. and Mrs. Fournier indicating that the Division had closed the complaint file.

8. On November 16, 2005, the Division received a complaint from the Unity Conservation Commission alleging that Mr. and Mrs. Fournier had caused ruts in a wetland on the Property. The complaint was assigned Wetlands Bureau Complaint File #2005-2727.

9. On November 23, 2005, Division personnel inspected the Property and observed that the wetland subject to voluntary restoration in the previous complaint had been impacted again by machinery causing ruts in approximately 250 square feet of the jurisdictional wetland.

10. On December 21, 2005, the Division issued Letter of Deficiency No. WET 05-058 requesting a restoration plan be submitted within 30 days of receipt of the Letter of Deficiency. The certified mail return receipt card was signed by Mr. Fournier on December 28, 2005.

11. On January 6, 2006, Landmark Land Services, LLC submitted a Wetland Restoration Plan on behalf of the Fourniers. The Restoration Plan is currently under review.

#### **IV. VIOLATION ALLEGED AND PROPOSED ADMINISTRATIVE FINE**

1. Douglas and Linda Fournier have violated RSA 482-A:3, I, by dredging approximately 250 square feet of jurisdictional wetland in a restoration area without a permit from DES. For committing repeated violations on the same property, Env-C 614.06(b) specifies a fine of \$2,000.

**The total fine being sought is \$2,000.**

#### **V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING**

**Pursuant to Env-C 601.06, Douglas & Linda Fournier are required to respond to this notice. Please respond no later than March 20, 2006 using the enclosed colored form.**

1. If you would like to have a hearing, please sign the appearance section of the colored

form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.

2. If you wish to discuss the possibility of settling the case, please sign the appearance, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

#### **VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

\* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** that you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** that you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

\*\*\*\*\***IMPORTANT NOTICE**\*\*\*\*\*

**An administrative fine hearing is a formal hearing.** All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

\*\*\*\*\*

Information regarding this proposed fine may be made available to the public via the DES Web page ([www.des.nh.gov](http://www.des.nh.gov)). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.

**COPY**  
Harry T. Stewart, P.E., Director  
Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

ec: Michael J. Walls, DES Assistant Commissioner  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Public Information Officer, DES PIP Office  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
Dawn Buker, DES Wetlands Bureau  
cc: Gretchen Hamel, Legal Unit Administrator  
Town of Unity Conservation Commission

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**DOUGLAS & LINDA FOURNIER ARE REQUIRED BY LAW  
TO RESPOND TO THIS NOTICE.**

**PLEASE RESPOND NO LATER THAN March 20, 2006**

Please check the appropriate line and fill in the requested information below:

**APPEARANCE ON** behalf of Douglas & Linda Fournier

\_\_\_\_\_ We request to have a **formal hearing** scheduled in this matter.

\_\_\_\_\_ We would like to **meet informally** to discuss the issues in this matter.

**WAIVER OF HEARING** On behalf of Douglas & Linda Fournier

\_\_\_\_\_ We certify that we understand the right to a hearing regarding the imposition of the proposed administrative fine and that we hereby waive those rights. The fine payment in the amount of \$2,000 paid to "Treasurer, State of New Hampshire" is enclosed.\*

*\* If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

**Pursuant to Env-C 203.05 please provide the following information:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name(s) (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

**RETURN THIS PAGE ONLY AND ANY PAYMENT TO:**

**DES Legal Unit**

**Attn: Michael Sclafani, Legal Assistant**

**P.O. Box 95**

**Concord, NH 03302-0095**

# ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • [www.des.nh.gov](http://www.des.nh.gov)

CO-2

2002

## Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

*This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.*

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.